

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.708 of 2017
and
C.M.P.No.18137 of 2017

Suresh @ Krishnan

.. Appellant/Appellant/
Plaintiff

-Vs-

Srinivasan

.. Respondent/Respondent/
Defendant

PRAYER: Second Appeal filed under Section 100 C.P.C against the Judgment and Decree dated 24.02.2017 made in A.S.No.16 of 2015 on the file of Principal District Court, Thiruvavur confirming the Judgment and Decree dated 09.09.2014 made in O.S.No.29 of 2013 on the file of Sub Court, Mannargudi.

For Appellant : Mr.J.Nandagopal

O R D E R

The plaintiff, who had lost concurrently before the Courts below, has preferred the above Second Appeal against the judgment and decree passed in a suit filed by him for permanent injunction restraining the defendant from interfering with his peaceful possession of the suit property.

2. The suit property originally belonged to one Sambasiva Iyer, who died on 15.09.1991. Thereafter, it is stated that the plaintiff has been living here with his wife and children including his mother. Along with the plaintiff, one Srinivasan, Balachandran and Durgammal were born. Srinivasan is the defendant in the suit and he has been living in West Bengal for several years. As the defendant was trying to alienate the property by selling it to some third parties, the plaintiff had filed the suit not to evict him, as he has been in settled possession of the same.

3. The suit was resisted by the defendant contending that the father of the defendant had executed a registered sale, in and by which the defendant got the right and title to the suit

property. Therefore, the suit was filed, as such and the plaint is not maintainable, as he is the true owner.

4. Before the trial Court, the plaintiff examined himself as PW-1 and two more witnesses were examined as PW-2 and PW-3 and Exhibits A1 and A15 were marked. There is no oral and documentary evidence on the side of the defendant.

5. On the above facts, after considering the evidence and documents, the Courts below have concurrently held that the plaintiff is not entitled to the decree as prayed for. Aggrieved by the same, the above second appeal has been filed by the plaintiff.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. The Will produced by the defendant had been denied by the plaintiff. It is contended that the defendant had not taken possession of the property pursuant to the Will. Hence, the plaintiff prayed for the decree. However, even presuming that there is no Will, the property belonging to the father would automatically devolve on the legal heirs by law of inheritance. The defendant also would be the co-owner of the property. The Courts below had held that the defendant being one of the co-owners and the possession of the plaintiff is on behalf of other co-owners, injunction cannot be granted. Although the plaintiff had produced the documents even at the appellate stage to establish his possession, the relief sought for in the suit cannot be granted against the other co-owners, especially, in the absence of the other sharers not being made parties to the suit. The plaintiff has not given any convincing reason for not having impleaded the other legal heirs of the deceased Sambasiva Iyer. The plaintiff has also not obtained his title by ouster, as the suit is filed only for bare injunction and not for declaration. In the absence of prayer for declaration of title, when the same was denied and when the plaintiff as co-owner is in possession of the property for and on behalf of other co-owners, he cannot claim injunction restraining them from interfering with his possession and enjoyment of the suit property so as to exclude them from exercising their rights as co-owners. Applying the said principle, there is no question of law arising for consideration in the Second Appeal and this Court finds no reason to interfere with the findings of the Courts below.

8. In view of the above discussion, there is no infirmity in the judgment of the Courts below warranting any interference by this Court.

9. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srn

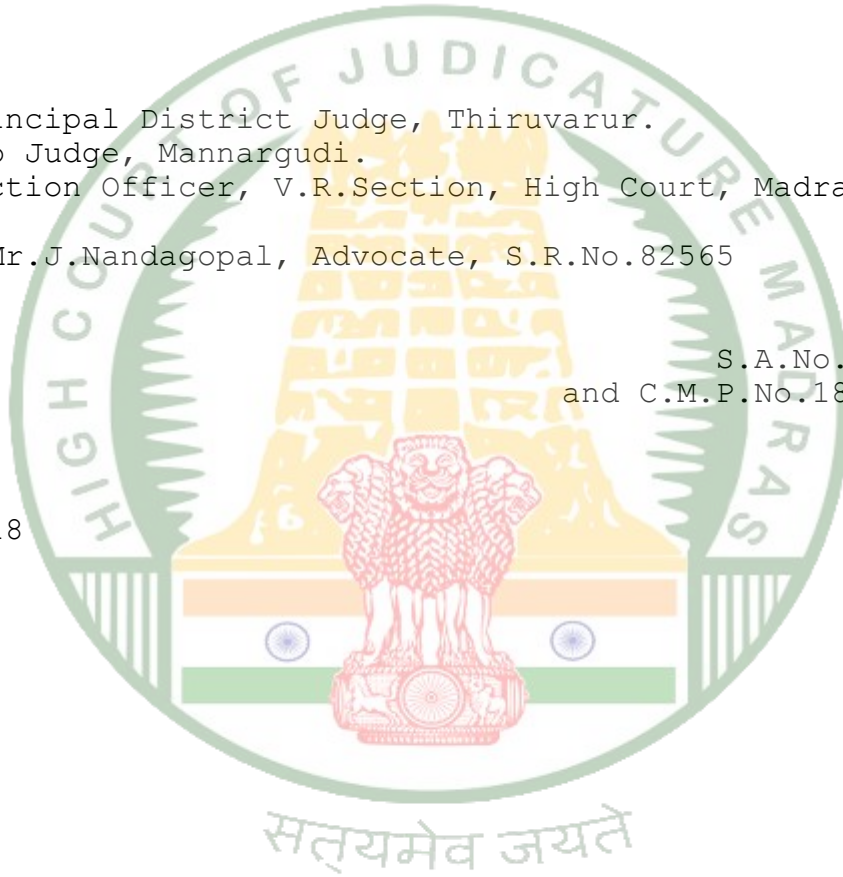
To

1. The Principal District Judge, Thiruvarur.
2. The Sub Judge, Mannargudi.
3. The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.J.Nandagopal, Advocate, S.R.No.82565

S.A.No.708 of 2017
and C.M.P.No.18137 of 2017

GJ(CO)
CS/05/01/18



WEB COPY